



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 02, 2022

IN THE MATTER OF:

Appeal Board No. 624730

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective February 4, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. No one appeared on behalf of the employer. By decision filed June 10, 2022 (022-11918), the Administrative Law Judge overruled the initial determination.

The employer applied to reopen the decision of the Administrative Law Judge filed June 10, 2022. Upon due notice to all parties, a hearing was held at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the. By decision filed July 13, 2022 (), the Administrative Law Judge granted the employer's application to reopen and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: By Notice of Hearing dated May 27, 2022, a hearing was scheduled for June 10, 2022, at 9:15 a.m. On or about May 27, 2022, the employer's third-party representative advised the employer's firsthand witness

of the scheduled hearing; the witness confirmed that she would be available to appear and testify. As part of her duties, the employer's witness administers tests to employees. These tests are scheduled months in advance; however, the testing date or time can be changed if necessary.

On the morning of June 10, 2022, the employer's witness was scheduled to administer a test which she knew would extend past the scheduled time of 9:15 a.m. for the hearing. Although the witness could have moved the test to a later time that day so that another employee could administer the test and she could appear at the hearing, she did not do so because the scheduled hearing had "slipped her mind." Consequently, the employer did not appear at the hearing which proceeded with only the claimant. After the hearing, the Administrative Law Judge overruled the initial determination by decision dated June 10, 2022 (022-11918). The employer applied to reopen 022-11918 by letter dated June 21, 2022.

OPINION: The regulations of the Board provide that "[o]n application duly made, an Administrative Law Judge may reopen a case...if such party shows good cause for the default" (see, 12 NYCRR 461.8). The credible evidence fails to establish that the employer had good cause for their failure to appear at the hearing held on June 10, 2022. Good cause exists where a party has a compelling reason for their failure to appear.

The employer's witness conceded that she was aware of the scheduled hearing some two weeks prior to the scheduled date and further conceded that she could have moved the time or date of the test so that she would have been available at the time of the hearing. Despite this, the witness took no steps to make herself available because the hearing had "slipped her mind." Neither the employer's discretionary decision not to make arrangements to postpone the test nor the fact that the employer's witness failed to remember that she was supposed to appear at the hearing constitute a compelling reason for the employer's failure to appear. Under the circumstances, the employer has failed to establish good cause for their failure to appear at the hearing on June 10.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's application to reopen 022-11918 is denied.

The decision in A.L.J. 022-11918 which overruled the initial determination,

disqualifying the claimant from receiving benefits, effective February 4, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is continued in effect.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER